58577-1

58577-1
81311-6

585771

No. 58771-1-I

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

HEATHER and CHAD THOMPSON,

Respondents,

v.

PAUL and JEANNINE HANSON,

Appellants.

RESPONDENTS' BRIEF

Douglas R. Cloud (WSBA #13456)
901 S. I Street, Suite 101
Tacoma, WA 98101
253.627.1505

Attorney for Respondents.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE

STATUTES

I. RESPONDENT'S SUMMARY OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The respondents agree that the Hanson's assignments of error generally fall into two main categories with an additional related issue, The Hanson's essentially present the following issues:

1. Was a judgment properly entered against the Hanson's personally as transferees under the Uniform Fraudulent Transfer Act (UFTA) pursuant to a finding of constructive fraud.
2. Is the trial court's finding of constructive fraud under the UFTA supported by substantial evidence in the record?
3. Did the Hanson's give anything of economic value to the corporation in return for their windfall from Lots 62 and 66 thus, entitling them to an offset?

II. STATEMENT OF CASE

The respondents herein, Chad A. Thompson, a single person, and Heather M. Thompson, a single person, filed the action below seeking enforcement of the judgment they received in King County Superior Court Cause No. 01-2-13252-1 KNT against Paul V. Hanson, Inc. That judgment in the amount of $68,598.60 was entered on December 22, 2003.[1] In the present action the amount of the judgment, together with any accrued statutory interest, was sought to be assessed against the individual defendants herein, Paul V. Hanson and Jeannine Hanson, as a result of their receipt of assets belonging to the corporate defendant in the prior action, Paul V. Hanson, Inc. (henceforth the Company). After hearing the evidence, the trial court in the present action entered a judgment against the Hansons individually in the amount of $89, 121.49 on June 26, 2006.

The lawsuit and the Thompsons' claims, in the prior case, arose from facts and circumstances arising between April of 1999 and August 2000.[2] The prior lawsuit was a breach of contract action against Hanson Construction Inc. because the company refused to sell the home the

---

1 Ex. 2, RP (March 21, 2006), p. 29

2 RP (March 21, 2006), pp. 12-16, 26

Thompsons had agreed to purchase from the Company for the agreed upon price.[3] The Company instead sold the home to another buyer, Mr. Tipper, netting approximately $14,805.00 from the sale.[4]

In the Spring and Summer of 2000, the Company was collapsing as it was under constant assault from the creditors if could not pay. During the time period pertinent to the present lawsuit i.e., the spring and summer of 2000, Paul V. Hanson, Inc., was clearly insolvent and in a precarious financial position.[5] While the corporation was insolvent the Hanson's arranged for the transfer of the last valuable assets of the corporation to themselves for no consideration.

On or about August 29, 2000, Paul V. Hanson, Inc., for no consideration, transferred to Paul V. Hanson and Jeannine Hanson, husband and wife, two completed single family residences on Lots in the same neighborhood as the Thompsons' home in the previous action. The Quit Claim Deed was recorded with the King County Recorder's office on September 13, 2000.[6] The deed itself contains the language indicating the

---

3 Ex. 2, RP (March 21, 20006,) pp. 12-18,

4 Ex. 2, RP (March 21, 2006,) p. 74

5 Ex. 4, 5 RP (March 21, 2006), p. 56 –120 164-166 RP March 22, 2006), pp. 8-16, 36-42

6 Ex. 3, RP (March 21, 2006), p. 108

property was transferred without consideration.[7] No excise tax was paid by the company or the Hansons at the time the Deed was recorded because no consideration was exchanged.[8]

The trial Court in the present action in its Findings of Fact and Conclusions of Law determined that the value of the transferred property, Lots 66 and 68, was at the time the transfers were recorded with the King County Recorder's Office on September 13, 2000, "...approximately $100,000.00 in excess of the corresponding financial undertaking by respondents." [9](Finding of Fact No. 11)

All of this valuable equity was transferred without any consideration by an insolvent corporation to the sole shareholder of the corporation and his wife at a time the Company was not paying its creditors.[10]

The Uniform Fraudulent Transfer Act was intended to address situations such as the fact pattern herein. The resolution of this case at trial depended upon a presentation of the financial status of the company

---

7 Ex. 3

8 Ex. 3 RP (March 21, 2006), pp. 108-110

9 Finding of Fact No. 11

10 RP (March 21, 2006), pp. 56-120, 164-166

on or about September 13, 2000, the date the Deed transferring the two lots to the Hansons was filed with the King County Recorder's Office.[11]

Paul V. Hanson, Inc., had refused to close the sale of the Thompson's custom home on or about July 31, 2000. Subsequently, in August 2000, there was discussion between the Thompsons, primarily Heather Thompson, and Paul V. Hanson, the individual. In those conversations, Mr. Hanson, the President of Paul V. Hanson, Inc., was informed by Ms. Thompson that the Thompson's were going to pursue legal action, if the Company did not close the sale of the house. The Company did not close the sale and, of course, the plaintiffs did pursue the prior legal action in which they prevailed. Ms. Hanson knew prior to September 13, 2000 that the Thompsons had a legal claims against the Company. The Thompsons became at that point, a creditor of the corporation. The Thompson' legal claim ripened into a $65,598.60 Judgment on that claim.[12]

Of course, by September 13, 2000, there were numerous creditors who were owed by the Company. These creditors included the King

---

11 Ex. 3

12 Ex. 1, 2 RP (March 21, 2006), pp. 12-15

County Department of Finance. The Company owed several years of back taxes on its real property. [13]It owed subcontractors.[14] The company had not paid a company called Washington Utilities, Inc., a unsecured debt of approximately $70,000.00 for a invoice for plat work on the "Blueberry Field", a plat the company was developing which was shortly thereafter foreclosed upon by the plat's construction lender Washington Federal.[15] The company was in default of its construction loan on Lot 62. It was in default of its construction loans on Lots 66 and Lots 68.[16] A default judgment had been entered against the corporation on behalf of Emerald Services on July 11, 2000.[17]

At the time of the transfer of Lots 66 and 68 to Mr. and Mrs. Hanson, the corporation was insolvent. It was apparently not making payments to any of its creditors in the ordinary course of business. Paul V. Hanson, Inc., owned only one asset of value after September 13, 2000, the lot intended for the Thompsons, Lot 62. Lot 62 was subsequently sold

---

13 Ex. 26 RP (March 21, 2007), pp. 57-61

14 Ex. 26 RP (March 21, 2007), pp. 57-61, 116

15 RP (March 21, 2007), p. 76

16 Ex. 26.

17 RP (March 21, 2007), pp. 60, 62

in October of 2000 to Mark Tipper for the sum of $235,000.00, which netted Paul V. Hanson, Inc., a small profit of approximately $14,805.00.[18] This amount was outweighed by the value of the Thompson's legal claim.[19] Lot 69, also owned by the corporation, had no value. When it was sold, Mr. Hanson and/or Paul V. Hanson, Inc., had to bring cash to the closing as there was no equity in Lot 69.[20] All other assets of the Company were ultimately lost to foreclosure.[21]

At trial Mr. Hanson admitted that what few tools and trade implements he had left in the Company on September 13, 2000 were subsequently lost when he failed to pay a storage unit fee for three months at which time the property was apparently sold to satisfy a landlord's lien.[22] The pickup truck titled in the corporation had little value and was donated to charity. It had little value.[23]

Mr. Hanson further admitted at trial that all remaining assets of the

---

18 Ex. 26 RP (March 21, 2007), pp. 71-76

19 Ex. 1, 2.

20 RP (March 21, 2006), p. 93

21 RP (March 21, 2006), pp. 91-100

22 RP (March 21, 2006), pp. 96, 97

23 RP pp. 96, 97

corporation, real and personal, were foreclosed upon by creditors in the months after September 13, 2000. The only asset that the Company after September 13, 2000 netted a gain to the $14, 805.00 he had from Lot 62. This amount was more than offset by the Thompson's claim and the Washington Utilities claim alone not to mention the other creditors.[24]

Paul V. Hanson, Inc., subsequent to September of 2000, did very little, if any, work and, essentially, the corporation went out of active business shortly thereafter. The corporation filed four separate bankruptcy petition between May and September of 2001.[25] This was done, according to Mr. Hanson, to forestall his creditors from foreclosing on the company's assets.[26] Any property left in the corporation had been either conveyed to Mr. and Mrs. Hanson, i.e., Lots 66 and 68, or was subsequently allowed to be foreclosed upon or liened. There were no bank accounts or assets of any kind left in the corporation, other than the worthless Lot 69 and, apparently, another worthless piece of property the "Blueberry Field" which was also foreclosed upon.[27] There were numerous creditors who

---

24 RP 3-21, 100

25 RP (Marc 21, 2006), pp. 100-104

26 RP (March 21, 2006), p. 107

27 RP (March 21, 2006), p. 81

were pursuing Hanson Construction Inc. prior to September 13, 2000. The transfer of the two Lots resulted in the trial courts conclusion of law that "There is substantial evidence that the Corporation, at a time when its remaining unencumbered assets were small in relation to the business transferred property to defendants and did not receive a reasonably equivalent value in exchange for the transfer." Conclusion of Law No. 3.

Mr. Hanson claims that he gave consideration to the corporation by assuming indebtedness and thus, the corporation received reasonably equivalent value for the transfer of the two Lots at issue. This argument contradicts legal authority, economic reality and the plain language on the face of deed executed by Mr. Hanson and Hanson Construction, Inc., which recites on its face as follows:

> The Grantor "Paul V. Hanson, Inc.," a Washington corporation for and in consideration of mere change in form or identity-transfer from corporation to its sole owners convey and quit claim to Paul V. Hanson and Jeannine Hanson husband and wife, the following described real estate situated in the County of King.

The deed, on its face shows, that no excise tax was paid upon the transfer. [28]Excise tax is required when property is transferred for consideration. The Hanson's argument in this regard is specious.

---

28 Ex. 3

III. ARGUMENT

A. Necessary Elements to Establish Constructive Fraud Under the UFTA

The court in its finding of facts and conclusions of law found that the defendants committed constructive fraud against the plaintiffs in two statutorily independent ways.

First, the court specifically indicated under conclusion of law No. 6 that "the transfer of the property described above was constructively fraudulent under the provisions of RCW 19.40.041 (a)(2).

RCW 19.40.041 (a)(2) reads in pertinent part as follows:

> **(a)** A transfer made or obligation occurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before of after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation; (1) with actual intent to hinder, delay, or defraud any creditor or the debtor; or (2) without receiving a reasonable equivalent value in exchange of the transfer or obligation, and the debtor; (1) was engaged or was about to engage in a business or a transaction for which remaining assets of the debtor were unreasonably small in relation to the business or transaction;

The court clearly in its finding of fact No. 7 indicates that reasonably equivalent value had not been given by the Hanson's to the Company because "...this conveyance was not of significant financial benefit to the corporation." The Trial Court also found that the Company

assets which remained were unreasonably small in relation to the business. Conclusion of Fact No. 3. It is important to note that constructive fraud as defined in RCW 19.40.041 (a)(2) makes no explicit reference to "insolvency" and in fact "insolvency" is not an element of a constructively fraudulent transfer pursuant to RCW 19.40.041 (a)(2). Thus, the Trial Courts Judgment dues not require a finding of insolvency because insolvency is not an element of constructive fraud pursuant to RCW 19.40.041 (a)(2).

"Insolvency" however, is an element of constructive fraud pursuant to the slightly different statute RCW 19.40.051. The Trial Court found that the Company was not solvent as defined in RCW 19.40.021.

RCW 19.04.051 (a) reads in pertinent part as follows:

> **(a)** The transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

In summary, constructive fraud under the UFTA can be established in two alternate ways; it can either be established under RCA 19.40.041 or RCW 19.40.051. The insolvency element required for a

finding under RCW 19.40.051can either be established by a balance sheet test or pursuant to the presumption of insolvency test which arises under RCW 19.40.021 (b) when a debtor does not pay its debts when due.

In any event, the trial court was clear that it did find constructive fraud pursuant to RCW 19.40.041 (a)(2). It is also evident from the court's findings of fact and conclusions of law that the trial court found that the defendants had engaged in constructive fraud pursuant to RCW 19.40.051 as well. The Court specifically entered Conclusion at Law No. 4 which states that the corporation was not solvent as defined by RCW 19.40.021. This conclusion was based upon the Trial Court's Finding of Fact No. 12 wherein the court found "as of September 13, 2000, the corporation was routinely not paying its debts when they became due."

The court's finding of fact No. 12 indicates clearly that the court found that the Company was insolvent based upon the presumption of the of insolvency contained within RCW 19.40.021 (b).

The courts findings under both alternative methods of committing constructive fraud are supported by ample evidence in the record.

B. Paul v. Hanson Inc. was insolvent on September 13, 2000.

Under the UFTA a transfer made without adequate consideration is

constructively fraudulent, i.e., without regard to the actual intent of the parties, where any one of the following exists; (1) the debtor was left by the transfer with unreasonably small assets for a transaction of the business in which the debtor was engaged, RCW 19.40.041 (a)(2)(I); or (2) the debtor intended to incur, or believed he or she would incur, more debts than they would be able to pay, RCW 19.40.041(a)(2)(ii); or (3) the debtor was insolvent at the time or as a result of the transfer: RCW 19.40.051(a).

The Hanson's defense on appeal to the finding of constructive fraud seems to be focused more on RCW 19.40.051(a) which requires a showing of corporate insolvency. Very little argument in the Hanson's opening brief is devoted to the court's explicit finding of constructive fraud pursuant to RCW 19.40.041 (a)(2). The Court's finding of constructive fraud pursuant to RCW 19.40.041 (a)(2) requires no showing of insolvency. Nonetheless, Trial Court's conclusion that Paul V. Hanson, Inc., was insolvent on September 13, 2000, is supported by the substantial evidence. Substantial evidence is evidence sufficient to persuade a fair minded person of the truth of the declared premise. See *Ernst Home Ctr v. Sato*, 80 Wn.App. 473, 910 P.2d 486 (1996)

Insolvency is defined by RCW 19.40.021. Pursuant to the statute,

insolvency can be established pursuant to a balance sheet test, i.e., the sum of the debtor's debts being greater than the debtor's assets, or a presumed insolvency test under RCW 19.40.021(b) that arises when a debtor is not paying his or her debts as they become due. The trial court explicitly in Findings of Fact No. 12 found the Company was insolvent pursuant to RCW 19.40.021 (b). Under either the balance sheet test or the presumed insolvency test the Company was insolvent.

The plaintiffs would submit that Mr. Hanson's attempt to pull fantasy numbers of value out of the air in an attempt to establish "balance sheet" solvency cannot overcome the corporation's presumed insolvency under RCW 19.40.021(b). The trier of fact determines a witnesses credibility and may believe all, part, or none of a witnesses testimony. *Butler v. Ringrose*, 170w211, 15 P.2d 1117 (1932). It is clear the Trial Court did not believe Mr. Hanson on the issue of solvency.

A trier of fact is not required to believe a party's testimony even absent impeachment evidence. *Hilton v. Mirrow*, 522 F.2d 588 (9th Cir. 1975) *Bland v. Mentor*, 385 p.2d 727, 63 Wn.2d 150 (1963). *Bland v. Mentor*, 63 Wn. 2d 150 (1963). Of course, Mr. Hanson's testimony in the present case was impeached by his own contradictory testimony.

In any event, a trier of fact is not required to accept an interested party's estimates of value. *Cowan v. Jensen*, 79 Wn.2d 844, 490 P.2d 436 (1971).

The Trial Court clearly rejected Mr. Hanson's testimony in regards to the value of corporate assets on September 13, 2000, as it should have because it was incredible. Mr. Hanson's testimony was repeatedly impeached by his own testimony. Mr. Hanson's testimony is also contradicted by circumstantial evidence. It should be noted that, other than the residence that was sold out from under the Thompsons, Mr. Hanson testified that every other asset of the corporation was either foreclosed upon or transferred for negative equity (Lot 69, etc.) subsequent to September 13, 2000. Had there been any value in those corporate assets, the corporation and/or Mr. Hanson would have endeavored to save the same. It should be noted that, under RCW 19.40.021(a), if the balance sheet test is utilized, the two transferred Lots, Lots 66 and 68, are not to be included as property of value on any balance sheet test. A balance sheet test shows the corporation was insolvent. Nothing of significant value in the Company remained and various creditors remained to be paid, including the Thompson's claim which resulted in a judgment against the

corporation in excess of any funds netted upon the sale of Lot 62. On September 13, 2000 the approximate $70,000.00 plus owed to Emerald Services was a unsecured debt as a lien was not filed until after September 13, 2000.[29] A default judgment had been entered against the Company on September 11, 2000. An additional judgment has subsequently been entered against the corporation on a debt antedating September 13, 2000 and all remaining corporate assets were foreclosed upon by creditors. Clearly, under the balance sheet test, the company was insolvent on September 13, 2000.

The fact that the company allowed all of these corporate assets to be foreclosed upon in short order is circumstantial evidence that shows they had no value.

The ultimate disposition of corporate assets and the consideration received for them is certainly relevant to establish the value of the corporate assets on September 13, 2000. Defendants contention to the contrary ignores reality. After all, had these purported assets had any value they would have been sold by a rational corporation for value

In any event, constructive fraud can be established under RCW

---

29 RP (March 21, 2206), pp. 74-76

19.40.041(2)(I) and (ii) without regard to the balance sheet insolvency test because of the statutory presumption of insolvency found in RCW 19.40.021. The evidence was overwhelming that the Company was not paying any creditors when due on September 13, 2000. The Hanson's tortured "balance sheet" argument in regard to what debts were secured or not has no pertinence to the Trial Court's finding of constructive fraud pursuant to RCW 19.40.041 (2). Moreover, the presumption of insolvency of RCW 19.40.021 is indicative of the Uniform Fraudulent Transfer Act's underlying purpose, which is to scrutinize suspicious transactions to insiders and provide legitimate equitable remedies to the defrauded creditors in the face of the wrongdoer's inevitable protestations of innocence. A statutory presumption of insolvency serves as evidence until and unless rebutted by competent and credible disinterested testimony. *McMullen v. Warren Motor Co.,* 1174 Wash.454. 25 P.2d 99 (1933). The Hansons were unable to overcome the presumption of insolvency to the Trial Court's satisfaction.

C. The Trial Court Has Statutory and Equitable Authority to Enter a Personal Judgment Against the Hansons.

It is by now well established that a court in Equity may enter a

personal judgment against a fraudulent transferee of property as defined by the UFTA upon a finding of constructive fraud.

In the case of *DeYong Management v. Previs*, 47 Wn.App. 341, 735 P.2d 79 (1987), the appellate court reversed the trial court's determination that it could not assess a personal judgment against the transferee parents of the transferor debtor's son. The appellate court found the parents intended to help their son evade his creditors. Thus, the appellate court held that a personal judgment could and would be assessed against the transferee parents. Any argument that *DeYong*, supra suggests that a personal judgment cannot be assessed against a transferee of fraudulently transferred assets is false. That is the case even when, as was the case in *DeYong,* supra., the assets were ultimately retransferred by the transferees prior to the creditors UFCA action. The appellate court's decision rested purely upon the trial court's finding of intent. It did not reach the issue of whether or not a transferee could be assessed a personal judgment in a "constructive fraud" case.

DeYong Management v. Previs, supra., was interpreting the Uniform Fraudulent Conveyance Act and not the current statutory scheme, the Uniform Fraudulent Transfer Act. Thus, the Hansons argument relies

upon dicta from a case interpreting a superceded statute.

Mr. Hanson contends the *DeYong Management, Ltd, vs. Previs*, supra., stands for the proposition that a personal judgment cannot be assessed against the Hansons in the present case absent a demonstration of actual intent to defraud. Because the Hansons have subsequently transferred Lot 66 and Lot 68, the Hansons contend that the Thompsons can no longer reach the two Lots and their chance to collect on their judgment has been foiled by the subsequent transfer. That result would leave the Thompson's with a uncollectible judgment and the Hanson's an unjustified windfall based solely upon the speed in which they disposed these assets. That is not an equitable result. It is true that *DeYong*, supra., does hold that in a situation where the transferee had intent to defraud a court can enter a personal judgment against the transferee. But, *DeYong*, supra., does not limit the personal liability remedy to situations where actual intent has been demonstrated. In other words, Mr. Hanson is arguing that the holding of *DeYong*, supra., stands by negative implication for the proposition that in the absence of actual intent a court cannot assess a personal judgment against the transferee. A close reading of *DeYong*, supra., shows that it does not stand for such a proposition. In fact, *DeYong*,

supra., specifically cites with approval in support of its holding the case of *Damazo v. Wahby*, 269 Md. 252, 256-57, 305 A.2d 138 (1973), wherein the court allowed a personal judgment against a transferee in situations where the property had been conveyed, has been disposed of, has depreciated in value, or cannot be reached even without any intent on the part of the transferee. In those situations the creditor can recover a personal judgment from the persons to whom the transfer is wrongfully made and through whose hands the property passes regardless of the presence or absence of intent to defraud. *Damazo v. Wahby*, supra, is directly on point to the present case. The reasoning of the *Deyong*, supra, court is set forth in the following language which can be found at 47 Wn.App. 346.

> No Washington appellate court has decided if the transferee of a fraudulent conveyance may be held personally liable to the transferor's creditors. However, courts in other states that have adopted the Uniform Fraudulent Transfer Conveyance Act have held that a money judgment may be entered against the transferee under certain conditions. In *Damazo v. Wahby*,, 269 Md. 252, 256-57, 305 A.2d 138 (1973), the court held that if the property fraudulently conveyed has been disposed of, has depreciated in value, or cannot be reached, the defrauded creditor may recover a money judgment from the person to who the transfer was wrongfully made, and through whose hands the property passed. The court *Damazo* rejected the argument that because the Uniform Fraudulent Conveyance Act provided

> the remedies of setting aside the conveyance or executing upon the property conveyed, it did not contemplate the entry of an in personam judgment against the transferee. The court reasoned that the remedies established by the act were simply alternatives to the legal and equitable remedies already available to a creditor, noting that the underlying objective of the act was to enhance, not impair, a creditor's remedies.

Thus, *DeYong*, supra., specifically sanctions a personal judgment pursuant to the UFTA in circumstances such as the present case, where the property fraudulently conveyed has been disposed of, as does *Clearwater v. Skyline Construction Co.,* 37 Wn.App. 305, 835 P.2d 257 (1992), and the UFTA itself. *DeYong,* supra emphasizes that the UFTA is intended to enhance a creditor's already existing remedies. That is evidently the case as the UFTA specifically states that the UFTA is intended to supplement a creditors existing legal and equitable remedies as well as those legal and equitable remedies remaining to be shaped by a learned judiciary pursuant to our common law.

In the case of *Park Hill Corp. v. Sharp*, 60 Wn.App. 283, 803 P.2d 326 (1991), also relied upon by the defendants, the court specifically indicated that the Uniform Fraudulent Conveyance Act does contemplate personal judgments against transferees in situations other than where "actual intent" have been demonstrated.

The court stated as follows:

> The UFCA does not specifically grant to a defrauded creditor the right to hold a transferee personally liable to the creditor for the value of the assets transferred. The issue of the availability of such relief under the UFCA was presented for the first time in this state in *DeYong Management v. Previs*, 47 Wn.App. 341, 735 P.2d 79 (1987). In *DeYong*, this court held a money judgment could be awarded to a creditor against a transferee if the transferee *'knowingly accepted the property with an attempt to assist the debtor in evading the creditor and . . . placed the property beyond the creditor's reach.' DeYong*, at 347. The UFTA acknowledges the remedies set forth in *DeYong* and the principles of equity supplement its provisions. RCW 19.40.081(b); RCW 19.40.902. Therefore, under the UFTA and the UFCA, a defrauded creditor is entitled to a money judgment against the transferee if the *DeYong* requirements are met, or equitable principles otherwise compel such relief." (emphasis added).

Park Hill Corp. v. Sharp, 60 Wn.App. 283 at 286.

Park Hill Corp., supra., references general equitable principles and remedies as being available to trial courts facing issues decided under the current Uniform Fraudulent Transfer Act that did not exist in the prior UFCA. In fact, the UFTA does specifically state that the remedies provided in the UFTA are supplemented by the common law and principles of equity. RCW 19.40.071(a)(3)(iii).[30]

---

30 RCW 19.40.071 reads as follows:
"Remedies of creditors.
(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

As can be seen from RCW 19.40.071(a)(3)(iii), the court has the ability, "subject to the applicable principles of equity" to award "any other relief the circumstances may require."

Likewise, RCW 19.40.902, states that the common law is intended to supplement the provisions of the Uniform Fraudulent Transfer Act.[31]

Both *DeYong*, supra., and the case of *Park Hill Corp. v. Sharp*, 60 Wn.App. 283 803 P.2d 326 (1991), were decided upon facts which occurred before the adoption of Uniform Fraudulent Transfer Act and thus,

---

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 6.25 RCW;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds."

31

RCW 19.40.902. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law of merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

they were decided upon law which existed prior to the current UFTA.

It was held in *Eagle Pacific Ins, Co. V. Christianson Motor Yacht, Inc.* 85 Wn.App 695, 934 P.2d 715, (D.W. 2, 1997) aff'd 135 Wn.2d 894 that RCW 19.40.081 (b) expressly authorizes the entry of Judgment against a transferee, where the transferred property has been disposed by the transferee.

RCW 19.40.081 (b) reads in pertinent part as follows:

> Except as otherwise provided in this section , to the extent a transfer is voidable in an action by the creditor under RCW 19.40.071 (a)(1), the creditor may recover judgment for the value of the asset transferred—or the amount necessary to satisfy the creditor's claim... The judgment may be entered against:
> (1) The first transferee of the asset for the person to for whose benefit the transfer was made...

The Hansons were both the first transferee and the persons for whose benefit the transfer was made. Had Lots 66 and 68 remained titled in the Company at trial the Trial Court would have, pursuant to RCW 19.40.071 (a) had the equitable and statutory power to void the transaction. The Hanson's are not saved by retransferring of the property. As the first transferee the Hansons are liable to the value of the transferred property, as the Trial Court found.

The UFTA, through RCW 19.40.081, has expanded and clarified a

creditor's remedies to include the remedy granted to the Thompsons, i.e. a Judgment against the Hansons, the transferees of the fraudulently conveyed property to the value of the fraudulently conveyed property.

In addition to the specific statutory authority for a judgment against the first transferee pursuant to RCW 19.40.081, the UFTA provides the more general remedies of RCW 19.40.071 (iii).

The current Uniform Fraudulent Transfer Act provides in section RCW 19.40.071 a general "catchall" remedy. RCW 19.40.071(3)(iii) allows the court to award "any other relief the circumstances may require." Interpreting that same "catchall" provision other courts have held that the Uniform Fraudulent Transfer Act does allow a personal judgment against transferees in circumstances without any demonstration of the transferee's intent. In *Shoel v. Lehmann*, 56 F.3d 750 (7th Cir. 1995) one of America's most eminent Jurists, Judge Richard Posner of the United States Court of Appeals, Seventh Circuit, emphasized the purpose of the act i.e. to protect creditors from scheming debtors. The court rejected the arguments of several innocent religious organizations which received constructively fraudulently conveyed donations and who were ultimately assessed with an in personam judgment. The court commented upon the religious

organizations arguments as follows:

> The religious corporations have a more direct route to their goal. For they argue that the statute does not authorize a money judgment, but only an order- with which they could not comply, having spent the money- directing the rescission of the transfer. The argument is not persuasive. E.g., *Tcherepnin v. Franz*, 489 F.Supp. 43, 45 (N.D.I11.1980) (interpreting Illinois law); *Spaziano v. Spaziano*, 122 R.I. 518, 410 A2d 113, 115 (1980). If accepted it would cause recipients (not limited to charities) of gifts and other transfers potentially voidable under the fraudulent conveyance statute to spend the money immediately, in an effort (perhaps doomed anyway, cf. *United States v. Ginsburg*, 773 F.2d 798 (7th Cir.1985) (embanc) to prevent tracing. The result would be the frustration of the statutory purpose.

Schoel, supra., 56 F.3d 750 at 761.

A similar result broadly interpreting the UFTA's "catchall" remedy and allowing in personam judgments as relief was reached in *Hansard Construction v. Rite Aid of Florida, Inc.* 783 So.2d 307 (2001) and in *Proteta v. Lombardo*, 75 Ohio App. 3d 621, 600 N.E. 2d 360, 362 Oh. Ct. App. (1991) see also Bruce Markell, The Indiana Uniform Fraudulent Transfer Act Introduction, 28 Ind. L. Rev. At 1223.

The respondents are entitled to a personal judgment against the defendants upon the Trial Court's finding of "constructive" fraud both under RCW 19.40.071(iii) and RCW 19.40.081.

D. The Hansons are not entitled to any offset because they gave nothing of economic value to the corporation in return for the transfer of the only remaining valuable assets of the corporation.

The Hansons claim that on or about September 13, 2000 that they gave something of value in consideration for receiving Lots 66 and 68 is preposterous. It should be noted that only one of the Lots, Lot 68, had a loan that was funded on or about September 13, 2000. The other lot, Lot 66, did not have a loan funded until many months later on March 21, 2001.[32] Thus, for Lot 66 not even loan refinancing was given. The seven month delay in loan funding further undermines and makes ludicrous Mr. Hanson's argument that on September 13, 2000, he gave value for the property by assuming indebtedness. Clearly, he did not as to Lot 66 and any statement to the contrary is a falsehood. The argument is fallacious anyway as no value was given for either lot.

There was no economic utility from the creditor's point of view to justify the transaction. A questioned transaction's validity under the Uniform Fraudulent Transfer Act is to be judged from the creditor's point

---

32 RP (March 21, 2006), p. 165

of view, not the debtor's. *In re, Prejean*, 994 F.2d 706 (9th Cir. 1993) interpreting California's version of RCW 19.40.031 (which is Washington's statutory definition of value). It has been held that any consideration not involving utility to the creditors does not meet with the statutory definition of value. *In re, Agricultural Research and Technology Group, Inc.*, 916 F.2d 528 (9th Cir. 1990). "Consideration having no utility from a creditor's viewpoint does not satisfy the statutory definition." Official Comment, Uniform Fraudulent Transfer Act, §3.

Courts of equity will follow fraudulently conveyed property into the hands of transferees and subject it to payment of the debtor's/transferor's debt and the transferee is liable to the debtor's/transferor's creditors to the value of the fraudulently conveyed asset. *U.S. v. Brown,* 820 F.Supp. 374 (N.D. Ill. 1993). See also RCW 19.40.081.

The Washington Courts are in accord. It was held in *Clearwater v. Skyline Constr. Co.*, 67 Wn.App. 305, 835 P.2d 257 (1992) review denied, 121 Wn.2d 1005, 848 P.2d 1263 (1993), that consideration having no utility from the viewpoint of the creditor trying to avoid a fraudulent conveyance is not adequate consideration pursuant to the UFTA. In

Clearwater, supra., a construction company's President conveyed corporate real property to herself and then paid the corporation's lender who was secured on the property before and after the conveyance. The court held that the corporate President did not give any value for the property despite assuming the corporate indebtedness. The Corporate president made the same argument as the Hanson's have made in the present case. The corporate President was held personally liable for her fraudulent conveyance. That should be the result in the present case, as well.

The facts of *Clearwater*, supra., are nearly identical to the facts of the present case. In that case, the appellate court directed entry of a judgment against the transferee construction company owner based upon the finding of "constructive fraud." In that case, the owner of a small construction company, while facing the threat of litigation, conveyed a lot owned and entitled in the incorporated construction company to herself, who happened to be the sole shareholder of the corporation. The construction company owner argued that she had paid "reasonably equivalent value" by assuming the indebtedness that the corporation had taken out and secured with the lot and, thus, had not committed fraud

under the UFTA. That argument was demolished by the appellate court.

> [T]he conveyance was constructively fraudulent under RCW 19.40.041(a)(2)(ii). Panasiuk conveyed the property from Skyline to herself without receiving reasonably equivalent value in return and while believing that Skyline would incur a debt, i.e., a judgment against it, which it would be unable to pay. See RCW 19.40.041(a)(2)(ii). The quitclaim deed recited no consideration, and Panasiuk did not pay any amount to Skyline as consideration for the conveyance. Further, Panasiuk acknowledged that at the time she executed and recorded the deed, she was aware of the Clearwaters' letter advising of their intention to commence legal action against Skyline. Panasiuk does not dispute these facts, but asserts that Skyline received adequate consideration in return for the conveyance by virtue of her repayment of the promissory note held by her lender. Under the UFTA, "reasonably equivalent value" is required in order to constitute adequate consideration. RCW 19.40.041(a)(2). Furthermore, the 1985 comment to the UFTA state that: "Value" is to be determined in light of the purpose of the act to protect a debtor's estate from being depleted to the prejudice of the debtor's unsecured creditors. Consideration having no utility from the creditor's view point does satisfy the statutory definition. Uniform Fraudulent Transfer Act 3 comment 7A U.L.A. 650 (1984). Panasiuk's repayment of the note benefitted her lender, but was of no benefit to the Clearwaters. Thus, we conclude that Panasiuk's repayment of the note did not constitute adequate consideration under the UFTA as a matter of law.

Clearwater, supra., 67 Wn.App. at 322.

The court then remanded it back to the trial court for entry of judgment against the transferee pursuant to RCW 19.40.071.

It bears noting that the president of the Clearwater Construction Company received a deed reciting no consideration just as the Hansons did

in the present case. The Hanson's also paid no excise tax on the transaction as was the case in C*learwater*, supra. If value was given to the Corporation then excise tax would have been due. The Hanson's chose not to report any consideration or pay any excise tax. So they are now essentially saying that by not paying excise tax they defrauded the county successfully because they actually did in fact give value to the corporation for the property despite representing otherwise to King County under oath. It would appear the Hansons like so many distressed debtors, cannot keep their frauds straight. No wonder the trial court found them incredible.

Under the UFTA, the determination of what constitutes "reasonably equivalent value" is made from the standpoint of the transferor's creditors. *In re, Pejean,* 994. F.2d 706 (9th Cir. 1993). Any consideration not involving utility to the creditors does not comport to the statutory definition of value which is to be determined in light of UFTA's purpose of protecting creditors. *In re, Agricultural Research and Technology Group, Inc.,* 916 F.2d 528 (9th Ci. 1990).

E. The Company's decision to allow all remaining assets of the corporation to be foreclosed upon subsequent to September 13, 2000 is certainly relevant to demonstrate

the corporation's insolvency on September 13, 2000.

The Trial Court has broad discretion in balancing the probative value of any offered evidence against potential consequences that might result from its admission. A Trial Court's ruling admitting evidence into trial will not be overturned absent a showing that it was based on untenable grounds or untenable reasons, considering the purposes of the Trial Court's discretion. *Martinez v. Grant County Public Utility District,* No. 2,851 P.2d 1248, 70 wash app. 134, reviewed denied 863 P.2d 1353, 122 wash 2d 1202. (1993)

ER 401 defines relevant evidence as evidence " ... having any tendency to make the existent of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." And or course, pursuant to ER 402 " all relevant evidence is admissible,..." except as otherwise limited in the evidence rules.

It is clear that the admission of evidence of a prior price paid for a subject property is admissible at trial, *Chase v. City of Tacoma*, wash app. 12(1979) 594 P.2d 942, 23. It is also recognized that the price of a particular item of personal property subsequent to the time in question is

admissible if relevant. *Hill v. Skagit Steel and Iron Works*, 122 wash 22., 210 P.2d 17, (1922). Thus, the trial court in deciding whether to admit or not evidence of price or disposition of property before or after a date in question is allowed to admit such evidence if it is relevant. Evidence of sales made many years after a particular event may of course not be currently relevant as the general level of prices may shift so drastically as to make such evidence irrelevant. However, in the present case, the situation was that the company was, on September 13, 2000, for all practical purposes winding up it's attires as no substantial work was done there after other than the disposition of the corporate assets. The only company assets that was sold for any positive consideration or net benefit was the residence that was intended to be sold to the Thompsons. However, the net gain to the corporation was less than the claim the Thompsons had against the company at the same time. The Thompson's original judgment exceeds any return to the corporation. The Thompson's judgment against Hanson Construction Inc. remains unsatisfied.

In any event, if a transaction involving a piece of property is close enough to the date in question before the Trial Court then the evidence of its transaction price is admissible. If it is too remote it is not. All of the

assets of the corporation that were discussed as being foreclosed upon in the trial were foreclosed upon very shortly after September 13, 2000. Any delay on the foreclosure or ultimate disposition of the assets would have been partially, if not primarily a result of Mr. Hansons' filing four separate bankruptcy petition on behalf of the corporation in the year 2001 in an attempt to forestall creditors from reaching the corporate assets. Certainly, logic and common sense would seem to lead to the conclusion that if a company had valuable assets it would sell those assets as it winds down its affairs for any positive equity it could retain from those assets. The subsequent foreclosures is strong evidence of the lack of valuable assets in the corporation on September 13, 2000. The company, in this instance, took no steps to preserve any value of these ultimately foreclosed assets because of course there was no value. At least that is what the evidence showed at trial.

The trial court's Finding of Fact No. 7 did not place the burden of proof on defendants.

The Trial Court through its Finding of Fact No. 7 does not put the burden of proof on the defendants to prove the necessity of the transaction. It merely indicates that the court balanced and evaluated the evidence and

concluded "this conveyance was not a significant financial benefit to the corporation." In other words "reasonably equivalent value" was not tendered in consideration for the transaction. The sentence in Finding of Fact No. 7 that reads "there was not significant evidence presented that this conveyance was necessary for the corporation to finance the two properties" merely restates the court's conclusion that this transaction was not of economic benefit to the corporation and that in fact the Company did not receive "reasonably equivalent value" for the asset transfer. The element that needed to be established was that the corporation did not receive a reasonably equivalent value in exchange for the two lots. Whether it was "necessary" to refinance the two lots is irrelevant to the Trial Court's determination of reasonably equivalent value. Therefore, the argument that the court somehow shifted the burden of proof to the defendant is specious.

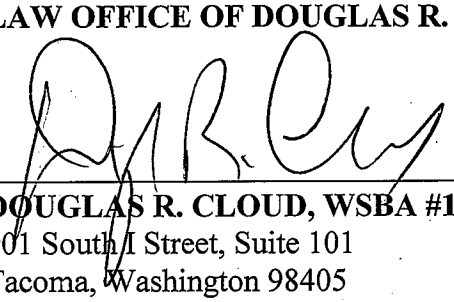
IV. CONCLUSION

The Hansons have tried throughout these proceedings to rely upon various specious technical defenses in an attempt to overcome the overwhelming evidence of their fraudulent conveyance of the only remaining valuable assets of the Company, Lots 66 and 68 on September 13, 2000. The Hanson's arguments interpret the UFTA very narrowly in an attempt to frustrate its broad, stated general purpose which is to allow equity to be done where creditors of failing corporations are frustrated in their attempt to collect debts of the corporation as a result of the fraudulent transfer of corporate assets. The evidence at trial was clear and overwhelming that throughout the Spring and Summer of 2000 Hanson Construction Inc., was financially failing. The statutory presumption of the Company's insolvency was never countered by credible evidence. The Company was not paying its subcontractors; it was not paying real estate or excise taxes; it was not paying its invoices for plat work; it was not paying its construction loans; it was not paying the storage unit where the Corporation stored its tools, and ultimately, every remaining assets of the corporation was foreclosed upon by the Corporation's creditors. The Company filed 4 bankruptcy petition in the year 2001 in its attempt to

forestall its creditor's foreclosures. The Company was insolvent, both presumptively and in actuality. As such, the Trial Court's judgment imposing a personal Judgment on the Hansons to the value of the fraudulent transferred assets should be affirmed.

DATED this 17 day of May, 2007.

LAW OFFICE OF DOUGLAS R. CLOUD



DOUGLAS R. CLOUD, WSBA #13456
901 South I Street, Suite 101
Tacoma, Washington 98405
253.627.1505

Attorney for Respondents Heather and
Chad Thompson